

PROTECTING THE PRIVACY OF STUDENT EDUCATION RECORDS

Student education records are official and confidential documents protected by one of the nation's strongest privacy protection laws, the Family Educational Rights and Privacy Act (FERPA). FERPA, also known as the Buckley Amendment, defines education records as all records that schools or education agencies maintain about students.

FERPA gives parents (as well as students in post-secondary schools) the right to review and confirm the accuracy of education records. This and other United States "privacy" laws ensure that information about citizens collected by schools and government agencies can be released only for specific and legally defined purposes. Since enacting FERPA in 1974, Congress has strengthened privacy safeguards of education records through this law, refining and clarifying family rights and agency responsibilities to protect those rights. FERPA's legal statute citation can be found in the U.S. Code (20 USC 1232g), which incorporates all amendments to FERPA. FERPA regulations are found in the Federal Register (34 CFR Part 99). FERPA's 1994 amendments are found in Public Law (P.L.) 103-382.

FERPA Protects Privacy

FERPA applies to public schools and state or local education agencies that receive Federal education funds, and it protects both paper and computerized records. In addition to the Federal laws that restrict disclosure information from student records, most states also have protection laws that reinforce

FERPA. State laws can supplement FERPA, but compliance with FERPA is necessary if schools are to continue to be eligible to receive Federal education funds. FERPA requires schools and local education agencies to annually notify parents of their rights under FERPA. The notice must effectively inform parents with disabilities or who have a primary home language other than English. The annual notice pertaining to FERPA rights must explain that parents may inspect and review records and, if they believe the records to be inaccurate, they may seek to amend them. Parents also have the right to consent to disclosures of personally identifiable information in the record, except under authorized circumstances.

FERPA gives both parents, custodial and non-custodial, equal access to student information unless the school has evidence of a court order or state law revoking these rights. When students reach the age of 18, or when they become students at post-secondary education institutions, they become "eligible students" and rights under FERPA transfer to them. However, parents retain access to student records of children who are their dependents for tax purposes.

FERPA Defines an Education Record

Education records include a range of information about a student that is maintained in schools in any recorded way, such as handwriting, print, computer media, video or audio tape, film, microfilm, and

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microfiche. Examples are:

- Date and place of birth, parent(s) and/or guardian addresses, and where parents can be contacted in emergencies;
- Grades, test scores, courses taken, academic specializations and activities, and official letters regarding a student's status in school;
- Special education records;
- Disciplinary records;
- Medical and health records that the school creates or collects and maintains;
- Documentation of attendance, schools attended, courses taken, awards conferred, and degrees earned;
- Personal information such as a student's identification code, social security number, picture, or other information that would make it easy to identify or locate a student.

Personal notes made by teachers and other school officials that are not shared with others are not considered education records. Additionally, law enforcement records created and maintained by a school or district's law enforcement unit are not education records.

Part of the education record, known as *directory information*, includes personal information about a student that can be made public according to a school system's student records policy. Directory information may include a student's name, address, and telephone number, and other information typically found in school yearbooks or athletic programs. Other examples are names and pictures of participants in various extracurricular activities or recipients of awards, pictures of students, and height and weight of athletes.

Each year schools must give parents public notice of the types of information designated as directory information. By a specified time after parents are notified of their review rights, parents may ask to remove all or part of the information on their child that they do

not wish to be available to the public without their consent.

FERPA Guarantees Parent Review and Appeal

If, upon review, parents find an education record is inaccurate or misleading, they may request changes or corrections, and schools and education agencies must respond promptly to these requests.

Requests should be made in writing, according to an agency's annual notice of procedures for exercising rights to amend records. Within a reasonable time period, the school or agency must decide if the request to change a record is consistent with its own assessment of the accuracy of the record. If a parent's request is denied, he or she must be offered the opportunity for a hearing. If the disagreement with the record continues after the hearing, the parent may insert an explanation of the objection in the record. FERPA's provisions do not apply to grades and educational decisions about children that school personnel make.

While parents have a right to review records, schools are not required by Federal law to provide copies of information, unless providing copies would be the only way of giving parents access. Schools may charge a reasonable fee for obtaining records, and they may not destroy records if a request for access is pending.

FERPA Restricts Disclosure of Student Records

Local education agencies and schools may release information from students' education records with the prior written consent of parents, under limited conditions specified by law, or as stated in local agencies' student records policies. The same rules restricting disclosures apply to records maintained by third parties acting on behalf of schools, such as state and local education agencies, intermediate administrative units, researchers, psychologists, or medical

practitioners who work for or are under contract to schools.

If an education agency or a school district has a policy of disclosing records, it must specify the criteria for determining school officials within an agency, including teachers, who have a legitimate educational interest. Generally, school officials have legitimate educational interest if they need to review an education record to fulfill their professional responsibilities.

Teachers and school officials who work with the students and schools to which students apply for entrance may also have access to education records without prior consent of the parent. In addition, information from students' records may be released to state and local education officials to conduct audits or to review records in compliance with Federal laws. Schools may also disclose information from education records without the consent of parents in response to subpoenas or court orders. A school official must make a reasonable effort to notify the parent before complying with the subpoena unless the subpoena is issued to enforce a law and specifies not to notify the parent. In emergencies, school officials can provide information from education records to protect the health or safety of the student or others.

There are cases when schools or school systems decide it is in the public interest to participate in policy evaluations or research studies. If student records are to be released for these purposes, the school or school system must obtain prior consent of the parent. Signed and dated written consent must:

- Specify the records that will be released;
- State the reason for releasing the records;
- Identify the groups or individuals who will receive the records.

In general, information about each request for records access and each disclosure of information from an education record must

be maintained as part of the record until the school or agency destroys the education record. Outside parties receiving records must receive a written explanation of the restrictions on the release of information.

Additional FERPA Provisions

In 1994, the Improving America's Schools Act amended several components of FERPA, tightening privacy assurances for students and families. The amendments apply to the following key areas:

- Parents have the right to review the education records of their children maintained by state education agencies;
- Any third party that inappropriately releases personally identifiable information from an education record cannot have access to education records for five years;
- Information about disciplinary actions taken against students may be shared, without prior consent of the parent, with officials in other education institutions;
- Schools may release records in compliance with certain law enforcement judicial orders and subpoenas without notifying parents.

Questions? Call the Local School System, State Education Agency, or the Federal Family Policy Compliance Office.

School districts, state education agencies, and the U.S. Department of Education all offer assistance about FERPA. Before contacting Federal officials, however, you can often get a direct and immediate response from your local or state education officials.

The Family Policy Compliance Office can be reached at the following address:

U.S. Department of Education
600 Independent Avenue, SW
Washington, DC 20202-4605
(202) 260-3887